

Designation of Abbott Districts Criteria and Process

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I. Background and Criteria

Abbott Districts are the product of approximately thirty years of extensive and controversial dialogue, litigation, and thirteen decisions of the New Jersey Supreme Court. In Abbott II, the Court found that the school funding formula was unconstitutional as to poorer urban districts. The Court identified those districts that appeared to qualify as “poorer urban districts,” but ultimately left it to the Legislature, the State Board and the Commissioner to make that determination. After the Court’s decision in Abbott II, the Legislature enacted the Quality Education Act (QEA). The Legislature defined those districts entitled to the Court’s Abbott remedy as the 28 districts identified by the Court and two additional districts, Neptune and Plainfield. In Abbott III, the Court found that the remedy provided by QEA was constitutionally deficient. The Legislature subsequently enacted the Comprehensive Educational Improvement and Financing Act (CEIFA) and identified those districts entitled to Abbott remedies as the original 28 Court-identified districts. Although CEIFA was found to be unconstitutional as applied to the Abbott Districts in Abbott IV, the Court did not invalidate limiting the group of districts to the original 28 identified by the Court. The Court noted, however, that a district could challenge its classification before the Commissioner (Abbott IV, page 200 fn37.). CEIFA was later amended to add both Plainfield and Neptune to the definition of an Abbott District. N.J.S.A. 18A:7F-3. Most recently, in the Educational Facilities Construction and Financing Act (EFCFA), the Commissioner was directed to make recommendations to the Legislature of criteria to be used in the designation of districts as Abbott Districts. N.J.S.A. 18A:7G-4(k). The purpose of this paper is to make those recommendations consistent with the intent and spirit of the Abbott decisions and the legislative guidance provided.

There are three themes captured in the voluminous record of the Abbott decisions that provide the basis for the designation, classification, and declassification of Abbott Districts. Moreover, the decisions are clear and specific that it is the Commissioner of Education who is charged, in consultation with the appropriate bodies, to develop and update criteria for Abbott designation that retain and strengthen the Court’s themes for answering the question “What is an Abbott District?”

The themes are:

- A. Abbott designation consistently spotlights poorer urban districts.
- B. Abbott designation rests on a two-part test, educational adequacy and concentrated poverty.

C. Abbott designation is a remedy, not a reward.

A. Poorer Urban Districts

For the last three decades urban public education policy in New Jersey has been largely defined through judicial determination. The landmark decisions in Robinson v. Cahill and Abbott v. Burke reflect a consistent judicial posture "that the urban poor are capable, that given sufficient attention in an adequately financed system using the best knowledge and techniques available, a thorough and efficient education is achievable." (Abbott II, page 394) The cases continuously direct the State to do more and to do better in providing the "thorough and efficient" education mandated by New Jersey's Constitution to poor urban children.

The New Jersey Supreme Court in Abbott II first designated "Abbott Districts" with criteria and a list of districts that were identified by the Commissioner of Education as *poorer urban districts*. It left it to "the Legislature, the State Board of Education and the Commissioner to determine prospectively which districts are poorer urban districts." (Abbott II, page 385)

Abbott is not about relative educational disparities alone. Instead, the decisions concern those districts in which both poverty and educational inadequacy are so substantial that they cannot possibly satisfy the standard absent implementation of the Abbott remedies that "poorer disadvantaged students must be given a chance to compete with relatively advantaged students." (Robinson v. Cahill I, page 515)

The factual record included only the comparative data from poor urban districts. The Court implies that older suburban and rural communities with similar characteristics might also be eligible for Abbott designation. While this possibility cannot be dismissed, it is overwhelmingly probable that the conditions for Abbott designation will be primarily urban. High concentrations of poverty, significant mobility, and the other characteristics of poverty are much more likely to be found in urban centers. The needs of poor rural and older suburban poor communities certainly exist and may require additional remedies, but Abbott designation should not be the only recourse available or possible.

B. Two-Part Test for Designation

In order to be eligible for an initial Abbott designation and remedies, a school district must be characterized by both low student achievement and concentrated poverty. Both Abbott II (page 385) and Abbott VII, as well as legislation (N.J.S.A.18A:7G-4), give the Commissioner the responsibility to determine those districts to include or, as will be discussed, to remove from Abbott status.

1. Educational Adequacy

The Commissioner of Education, the Department of Education and the State Board of Education must insure that students receive a thorough and efficient education. The means by which they determine which school districts satisfy this requirement is the State Monitoring System. Educational adequacy must be determined within the context of the Core Curriculum Content

Standards (CCCS). (Abbott *N*, pages 161-162) Each district must offer a program that gives students the opportunity to master the Content Standards. In Abbott II, the Court notes certain factors that could be indicative of educational adequacy. These factors include:

1. variety of course offerings;
2. facilities;
3. instructors' education and experience;
4. teacher/pupil ratios;
5. statewide test scores; and
6. drop out rate.

The Court does not suggest that any one of the above standards is determinative. Acceptable performance emerges in a balance of the State Monitoring System standards. As a result of the enactment of the Educational Facilities Construction and Finance Act (2000) and the State's pledge to fund at least 40 percent of school facilities costs in all districts, the Department has excluded facilities as a criterion.

Test scores must be considered within the context of the district's ability to attain "adequate yearly progress" as required by the "No Child Left Behind. (NCLB)" legislation. This federal measure focuses on educational improvement over time as assessed annually and not on a level of educational competency. Perhaps more importantly, NCLB forces districts to include the performance of Special Education, Limited English Proficiency, and racial and ethnic minorities as subsets. The failure of any one group to improve can result in the designation as a "School Needing Improvement." Additional factors not specifically referenced by the Court, but appropriate for consideration are school safety and the ability of all students at Grade 3 to read at grade level. Therefore, to determine educational adequacy the following factors will be considered:

1. statutory monitoring results;
2. variety of course offerings;
3. teacher qualifications and experience;
4. teacher/pupil ratios;
5. drop out rates;
6. ability of Grade 3 students to read at grade level; and
7. statewide test scores.

Going forward, the development of the statewide student-level database will produce much more rigorous and credible data for making such judgments. Concentrated poverty districts in which students are consistently attaining acceptable achievement may not be designated an Abbott District, though their ability to offer a sound educational program in the face of substantial obstacles should be celebrated and shared with other districts.

2. Concentrations of Poverty-Economic Indicators

The socioeconomic status for the 28 (now 30) districts included in CEIFA (N.J.S.A.18A:7F-3) as Abbott Districts is determined in large part by District Factor Grouping (DFG). The Department of Education devised this system in 1974 to rank every district in the state by seven factors: 1) per capita income level; 2) occupation level; 3) education level; 4) percent of

residents below the federal poverty level; 5) density (the average number of persons per household); 6) urbanization (percent of district considered urban); and 7) unemployment (percent of those in the work force who received some unemployment compensation). (Abbott II, page 385)

The DFG model was revised following the 1990 census, as follows: 1) Percent of population with no high school diploma; 2) Percent with some college; 3) Occupation; 4) Population density; 5) Income; 6) Unemployment, and 7) Poverty. Most Abbott Districts are found in DFG A, with a few in DFG B, and two in DFG C. Not all DFG A districts are Abbotts.

Additional criteria for *urban districts* derive from those districts originally identified as "urban aid districts" by the Department of Community Affairs pursuant to N.J.S.A.52:27D-178 to 181 and now included as New Jersey Redevelopment Authority "eligible municipalities."¹ To qualify as an urban aid district, the municipality must be of a certain size or density, have a certain number of children whose families are on welfare, have public housing, and a higher tax rate or lower property valuation per capita. (Abbott II, pages 341-342)

Municipal overburden, which can be determined by comparing the sum of the county and municipal tax rates among the school districts, must also be considered. (Abbott II, page 343) In the Educational Facilities and Financing Act, the Legislature provided additional guidance in determining socioeconomic status for new or continuing Abbott Districts. N.J.S.A.18A:7G-4.

The criteria may include, but not be limited to: the number of residents per 1,000 within the municipality or municipalities in which the district is situate who receive TANF; the district's equalized valuation per resident pupil...the district's income per resident pupil...the population per square mile of the municipality or municipalities in which the district is situate; and the municipal overburden.

Given this context and its own analysis, the Department of Education adopts the following economic indicators to guide Abbott classification.

The district must be DFG A and satisfy the following criteria. DFG B districts that also meet the following criteria may be classified as Abbott if they demonstrate additional substantial economic hardship:

1. The district must have a low-income concentration (as measured by eligibility for free lunch under the United States Department of Agriculture free/reduced lunch program) of at least 40 percent;

¹ The current list appears on the NJRA website at:
<http://www.state.nj.us/njra/browneligible.html>

2. If the district has a low-income concentration less than 60 percent, then it must have an equalized value per capita at least 3 percent below the state average and equalized tax rate at least 30 percent greater than the state average;
3. If the low-income concentration is at least 60 percent, then the equalized value per capita must be at least 3 percent below the state average; the equalized tax rate does not factor into the eligibility requirement for these districts; and
4. The district must be included in the NJRA eligible list.

C. A Remedy Not a Reward

A remedy in the strictest sense of the word provides a response to correct, to improve and/or to change a condition in favorable or desirable ways. In terms of Abbott designation, the remedies as defined broadly and specifically are similarly intended to improve student achievement through the application of resources and the support that the community, because of economic conditions, is unable to provide. It is under those circumstances that the Abbott decision requires that additional state aid and remedies must be provided.

If the Abbott remedies are properly implemented, they may produce such an improvement in student performance that the district's Abbott status might be eliminated or reduced in scope. In combination with changing economic conditions, this possibility might fundamentally change the district's status. However, when durable and concentrated poverty are combined with significant educational improvement, the presumption is that Abbott status will be maintained. This shall occur almost exclusively in District Factor A Abbott School Districts.

Change in status requires a systematic and timely review of current Abbott Districts and of prospective Abbott Districts so that a determination consistent with the intent and spirit of Abbott can be made. Such a review will occur after the decennial census; although prospective districts could petition the Commissioner for such designation (and appeal through the Courts if denied). There may be circumstances where the Commissioner independently determines that students in a particular district require the full array of Abbott remedies. In the instance where a district applies for Abbott designation, a thorough and promulgated review process must be established. In all cases, both the relevant educational and economic criteria must apply.

Abbott designation carries with it the obligation to implement specific court-ordered remedies. Prospectively, one could classify any district eligible for any state-supported remedy as Abbott regardless of the range of special services. It is preferable to limit Abbott designation to districts that qualify for most, if not all, Abbott remedies. Presently, only districts in DFG A and B and the two DFG C districts qualifying for urban aid with concentrations of poverty have been designated Abbots. Other districts which may be determined by the Commissioner to be in need of additional remedies but not the full panoply of Abbott remedies, would be designated as non-Abbotts. Remedies may include full day Early Childhood programs for four-year-olds and/or 100 percent reimbursement for Facilities improvement or other appropriate remedies. The redesign of a modified school formula should provide for the "sliding scale" approach for needy,

non-Abbotts. This approach would be district focused and certainly preferable to the expansion of broad brush Abbott designation.

Particular attention should be given to K-8 districts requiring additional resources. They do not fit into the Abbott model which are all PK-12 districts. Additionally, high poverty rural districts may require additional resources to deal with issues of high student mobility and their inability to attract highly qualified teachers. In those districts, full school day preschool (six hours) for four-year-olds and half school day preschool for three-year-olds, some other preschool model, and/or early literacy programs may be appropriate. Additionally, for those districts not providing programs beyond the fifth or eighth grade, there must be effective articulation between the lower schools and the districts into which they feed. Those districts the Commissioner determines to fit into this category will be asked to develop a three-year plan to integrate into their curriculum preschool and other programs determined to be required into their curriculum. By 2008 it is anticipated that preschool will be in place for all eligible children in those districts. The Commissioner will recommend that the State provide the additional funds each district will need to implement these programs.

II. Process

Based on the above economic, urban and educational indicators set forth above, districts that meet the Abbott criteria, but have not been designated as such, will be phased in as Abbott Districts over time. The first year will be a planning year in which the district will receive the funds necessary to undertake a comprehensive needs assessment and develop a three-year operational plan for each school and for the central office. The first three-year operational plans should focus on two specific programs – high quality preschool and intensive early literacy. This planning year should include substantial professional development to prepare for the programmatic changes that are identified in the three-year operational plans. Future three-year operational plans will include other initiatives to address issues in the district that are preventing students from achieving the CCCS. Increased State funds will be provided, as needed, to support the activities identified in the approved three-year plans.

Districts that do not meet the Abbott criteria, but may be eligible for “sliding scale remedies,” shall be required to demonstrate financial inability to provide such remedies and to demonstrate educational inadequacies relative to those needs. Those districts will also be required to develop an implementation plan. The timing and details of the plan shall be tailored to specific district needs.

The decennial census may validate that some Abbott Districts no longer satisfy Abbott’s economic requirements. After each census, the Commissioner shall document those Abbott Districts, if any, that no longer satisfy the criteria for concentrated poverty. An exit plan will be devised for each no longer qualifying district to permit an orderly financial and educational transition. Funding, for example, might be phased out over four years. These districts will continue to receive 100 percent facilities funding for all projects in the design or construction phase. Districts will be able to make application for adjustment based on hardship.

We should not remove from Abbott status those District Factor A districts that continue to qualify as high-poverty even if their students consistently achieve at acceptable levels. These

high performing Abbott Districts reflect a local leadership and commitment essential to quality outcomes, and not enough time has elapsed to make sure the improved educational process has been institutionalized. It is reasonable that these DFGA districts with high concentrations of poor children require more time and analysis to determine if their success will continue without the Abbott remedies. Therefore, they must, at this time, remain designated as Abbotts.

Conclusion

The responsibility to insure that all New Jersey public school students receive a thorough and efficient education rests with the Commissioner, the Department of Education and the State Board, not with the Courts. While the New Jersey Supreme Court, through Abbott, has provided a framework to assure compliance with that mandate in the 30 Abbott Districts, that framework establishes certain remedies. The framework does not implement the remedies or represent that a different set of remedies may not be more appropriate under certain conditions or, that as economic conditions change, the remedies cannot change. This paper offers a blueprint for next steps for children in districts challenged by insufficient resources and unable to offer a fully adequate education. Now Abbott Districts will be regularly reviewed both for economic need and educational offerings, and other districts in need will have appropriate remedies available.